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8	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA		
9	COUNTRY SIDE CENTER CORONA,	CASE NUMBER:	
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11	Plaintiff	ED CV 18-2401-JAK (SPx)	
12	v.		
13	COUNTRY BBQ, INC., et al.,	ORDER REMANDING CASE TO	
14		STATE COURT	
15	Defendant(s).	JS-6	
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		tion to the California Superior Court for the	
18	County of Riverside for lack of sub	oject matter jurisdiction, as set forth below.	
18 19	County of Riverside for lack of sub	oject matter jurisdiction, as set forth below. e of statute and 'a suit commenced in a state	
18 19 20	County of Riverside for lack of sub- "The right of removal is entirely a creature court must remain there until cause is shown for	oject matter jurisdiction, as set forth below. e of statute and 'a suit commenced in a state its transfer under some act of Congress."	
18 19 20 21	County of Riverside for lack of sub- "The right of removal is entirely a creature court must remain there until cause is shown for Syngenta Crop Protection, Inc. v. Henson, 537 U.	oject matter jurisdiction, as set forth below. e of statute and 'a suit commenced in a state its transfer under some act of Congress." S. 28, 32 (2002) (quoting Great Northern R. Co.	
18 19 20 21 22	County of Riverside for lack of sub- "The right of removal is entirely a creature court must remain there until cause is shown for Syngenta Crop Protection, Inc. v. Henson, 537 U.v. Alexander, 246 U.S. 276, 280 (1918)). Where County of Riverside for lack of sub- "The right of removal is entirely a creature court must remain there until cause is shown for sub- "Syngenta Crop Protection, Inc. v. Henson, 537 U.v. Alexander, 246 U.S. 276, 280 (1918)).	oject matter jurisdiction, as set forth below. e of statute and 'a suit commenced in a state its transfer under some act of Congress.'' S. 28, 32 (2002) (quoting Great Northern R. Co. Congress has acted to create a right of removal,	
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18 19 20 21 22 23 24 25	County of Riverside for lack of substitution of the right of removal is entirely a creature court must remain there until cause is shown for Syngenta Crop Protection, Inc. v. Henson, 537 U. v. Alexander, 246 U.S. 276, 280 (1918)). Where Cothose statutes are strictly construed against removations. 672 F.3d 661, 667 (9th Cir. 2012); Gaus v. Mulless otherwise expressly provided by Company of the control of the	oject matter jurisdiction, as set forth below. e of statute and 'a suit commenced in a state its transfer under some act of Congress." S. 28, 32 (2002) (quoting Great Northern R. Co. Congress has acted to create a right of removal, val jurisdiction. Id.; Nevada v. Bank of America Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). ongress, a defendant may remove "any civil	
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Dow Chemical Co., 443 F.3d 676, 682 (9th Cir. 2006); Gaus, 980 F.2d at 566-67. "Under the plain terms of § 1441(a), in order properly to remove [an] action pursuant to that provision, [the removing defendant] must demonstrate that original subject-matter jurisdiction lies in the federal courts." Syngenta Crop Protection, 537 U.S. at 33. Failure to do so requires that the case be remanded, as "[s]ubject matter jurisdiction may not be waived, and . . . the district court must remand if it lacks jurisdiction." Kelton Arms Condo. Owners Ass'n v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003). "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). It is "elementary that the subject matter jurisdiction of the district court is not a waivable matter and may be raised at anytime by one of the parties, by motion or in the responsive pleadings, or *sua sponte* by the trial or reviewing court." Emrich v. Touche Ross & Co., 846 F.2d 1190, 1194 n.2 (9th Cir. 1988).

From a review of the Notice of Removal and the state court records provided, it is evident that the Court lacks subject matter jurisdiction over the instant case, for the following reasons.

- ✓ No basis for federal question jurisdiction has been identified:
 - The Complaint does not include any claim "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.
 - Removing defendant(s) asserts that the affirmative defenses at issue give rise to federal question jurisdiction, but "the existence of federal jurisdiction depends solely on the plaintiff's claims for relief and not on anticipated defenses to those claims." ARCO Envtl. Remediation, L.L.C. v. Dept. of Health and Envtl. Quality, 213 F.3d 1108, 1113 (9th Cir. 2000). An "affirmative defense based on federal law" does not "render[] an action brought in state court removable." Berg v. Leason, 32 F.3d 422, 426 (9th Cir. 1994). A "case may not be removed to federal court on the basis of a federal defense . . . even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case." Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 14 (1983).
 - The underlying action is an unlawful detainer proceeding, arising under and governed by the laws of the State of California.

1	✓ Diversity jurisdiction is lacking:			
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3		Every defendant is not al 1332(a).	leged to be diverse from every plaintiff. 28 U.S.C. §	
4		✓ The Complaint does not	allege damages in excess of \$75,000, and removing	
5	'	defendant(s) has not sho	wn, by a preponderance of the evidence, that the amount ent has been met. <u>Id.</u> ; <u>Abrego Abrego</u> , 443 F.3d at 683.	
6		in controversy requirem	in has been met. Id., <u>ixblego hblego</u> , 443 1.34 at 663.	
7 8		The underlying unlawful exceed \$25,000.	detainer action is a limited civil action that does not	
9	IT IS THE	REFORE ORDERED that this	s matter be, and hereby is, REMANDED to the Superior	
10	Court of California listed above, for lack of subject matter jurisdiction.			
11	IT IS SO ORDERED.			
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13	Date:	November 27, 2018	John A. Kronstadt 9th 1	
14			United States District Judge	
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